

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

CASE NO. CR06-157MJP

Plaintiff,

ORDER ON GOVERNMENT'S  
MOTION FOR AUTHORIZATION  
TO DEPOSE FOREIGN WITNESSES

## HENRY C. ROSENAU,

Defendant.

This matter comes before the Court on the government's renoted motion for authorization to depose foreign witnesses. (Dkt. No. 79.) Having reviewed the government's renoted motion, emergency request for ruling regarding deposition procedure (Dkt. No. 80), the Defendant's position to the motion (Dkt. No. 81), the government's reply in support of the motion (Dkt. No. 85), all related filings, and having considered the oral argument of the parties, the Court hereby ORDERS:

1. The government's request to conduct the deposition of a foreign witness is DENIED.

This order incorporates the reasoning explained orally by the Court in the March 23 hearing.

2. Instead, because exceptional circumstances exist, the government is AUTHORIZED to secure the live broadcast testimony in Canada of Kip Whelpley. The government shall facilitate the testimony so that the Defendant can see Mr. Whelpley, Mr. Whelpley can see the Defendant, and the Jury can see Mr. Whelpley testifying live.
3. The Defendant's attorney, Mr. Platt, shall travel to Canada to conduct cross examination of Mr. Whelpley. A direct communication link between Mr. Platt and the Defendant shall be provided, and opportunities for the Defendant to communicate with Mr. Platt will be set up.
4. The Court hereby APPOINTS a second attorney to represent Mr. Rosenau in this matter. This attorney will be available to Mr. Rosenau while he is in the courtroom during the live video testimony of Mr. Whelpley from Canada.
5. The government's request to depose Zachary Miraback is DENIED without prejudice, because the government has failed to demonstrate exceptional circumstances for his unavailability, beyond simply stating that he is not willing to cooperate.
6. The government shall bear the expense of securing and facilitating the live video testimony of Mr. Whelpley, including the reasonable costs of Mr. Platt to attend the deposition in Canada.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 23rd day of March, 2012.

Marsha J. Pechman  
Marsha J. Pechman  
United States District Judge